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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/575,544
Filing Date: May 18, 2006
Appellant(s): KELLER, REINHARD

Douglas W. Sprinkle
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 5, 2011 appealing from the Office action mailed November 9, 2010.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Harding et al. (U.S. Publication Number: 2003/0114288)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Harding et al. (U.S. Publication Number: 2003/0114288).

As to independent claim 1, Harding discloses a control (e.g., controller 16) for a machine for the manufacture of paper padding (e.g., cushioning conversion machine for moving the paper material through the machine to create the dunnage material) (see

Paragraph [0037] and [0042]), wherein the machine comprises a drive motor (e.g., feed motor 24) having a cutting device (e.g., cutting assembly 26) and a shaping device to form a piece of padding (e.g., forming assembly 20) from a paper web and to cut it off (e.g., cutting the dunnage product) in a desired length (e.g., desired length) (see Paragraph [0046] and [0038]), comprising an input means (e.g., keypad button) to input a desired length of padding (e.g., particular cut length) (see Paragraph [0046], [0077], and [0081]);

a control unit (e.g., controller 16) (see Paragraph [0037]) having a memory to control the drive motor in response to the input means (e.g., microprocessor 48 provides a signal to the feed motor through the feed motor port to feed material through the machine for the appropriate length of time to provide dunnage of the length which the operated selected from the keypad; processor 48 uses information to control the gear assembly 22 and thus uses this information to control pad lengths as well as to determine and store in non-volatile memory 230 the total length of pad produced) (see Paragraph [0046], [0077], and [0081]),wherein an activation of the input means (e.g., control pad lengths) starts the drive motor and a deactivation of the input means triggers a cutting procedure and stops the drive motor (e.g., activation/deactivation signals to the feed motor) (see Paragraph [0046] and [0081]) so that the time period of the activation of the input means corresponds to the length of padding produced (e.g., length of time that equates to inches of dunnage material) (see Paragraph [0046]-[0049]), and wherein the control unit (e.g., control pad lengths) (see Paragraphs [0046] and [0081]) automatically stores said length of padding produced in the memory on deactivation of

the input means (e.g., activation/deactivation signals to store in the non-volatile memory the total length of pad produced) (see Paragraph [0081]) and makes it available for a further call up upon momentary activation of said input means (e.g., paper usage as well as other information stored in the non-volatile memory 230 may be made available for display when desirable) (see Paragraph [0077]) such that the length of padding just produced is automatically reproduced on request (e.g., microprocessor 48 then waits for the next key on the keypad to be depressed and repeats the process to produce the length of dunnage corresponding to the key depressed) (see Paragraph [0046]-[0049]).

As to independent claim 14, Harding discloses a machine for the manufacture of paper padding (e.g., pads produced by machine) (see Paragraph [0071]), comprising:

a drive motor (e.g., feed motor 24) having a cutting device (e.g., cutting assembly 26) and a shaping device (e.g., forming assembly 20) to shape a piece of padding from a paper web and to cut it off (e.g., cutting the dunnage product) in a desired length (e.g., desired length) (see Paragraph [0046] and [0038]); and

a control (e.g., controller 16) (see Paragraph [0037]) comprising:

an input means (e.g., keypad button) to input a desired length of padding (e.g., particular cut length) (see Paragraph [0046], [0077], and [0081]);

a control unit (e.g., controller 16) (see Paragraph [0037]) having a memory to control the drive motor in response to the input means (e.g., microprocessor 48 provides a signal to the feed motor through the feed motor port to feed material through the machine for the appropriate length of time to provide dunnage of the length which the operated selected from the keypad; processor

48 uses information to control the gear assembly 22 and thus uses this information to control pad lengths as well as to determine and store in non-volatile memory 230 the total length of pad produced) (see Paragraph [0046], [0077], and [0081]), wherein an activation of the input means (e.g., control pad lengths) starts the drive motor and a deactivation of the input means triggers a cutting procedure and stops the drive motor (e.g., activation/deactivation signals to the feed motor) (see Paragraph [0046] and [0081]) so that the time period of the activation of the input means corresponds to the length of padding produced (e.g., length of time that equates to inches of dunnage material) (see Paragraph [0046]-[0049]), and wherein the control unit (e.g., control pad lengths) (see Paragraphs [0046] and [0081]) automatically stores the length of padding produced in the memory on deactivation of the input means (e.g., activation/deactivation signals to store in the non-volatile memory the total length of pad produced) (see Paragraph [0081]) and makes it available for a further call up upon momentary activation of said input means (e.g., paper usage as well as other information stored in the non-volatile memory 230 may be made available for display when desirable) (see Paragraph [0077]) such that the length of padding just produced is automatically reproduced upon request (e.g., microprocessor 48 then waits for the next key on the keypad to be depressed and repeats the process to produce the length of dunnage corresponding to the key depressed) (see Paragraph [0046]-[0049]).

As to dependent claim 2, Harding teaches a control in accordance with claim 1, wherein the stored length of padding can be called up by an actuation, in particular a brief actuation, of the input means or of a further input means from the memory (e.g., paper usage as well as other information stored in the non-volatile memory 230 may be made available for display when desirable) (see Paragraph [0077]), with the manufacture of at least one further piece of padding being triggered automatically in the called up length on the call up of the length of padding (e.g., length of pads) (see Paragraph [0071] and [0086]).

As to dependent claim 3, Harding teaches a control in accordance with claim 1, wherein the input means is an individual switch (e.g., foot switch) or push button (e.g., keypad buttons) (see Paragraph [0046] and [0053]); and

wherein an input pad (e.g., keypad) is provided in addition to the switch or push button (e.g., foot switch) with which desired lengths of padding can be input into the control and/or can be called up out of the control, with the manufacture of at least one piece of padding being triggered automatically in the called up length on the call up of a length of padding (e.g., length of each pad) (see Paragraph [0046] and [0053]).

As to dependent claim 4, Harding teaches a control in accordance with claim 3, wherein it permits a directly sequential call up of a respective length of padding with the switch or the push button (e.g., foot switch), on the one hand, and with the input pad (e.g., keypad), on the other hand, without a further input means of the control having to be actuated between these two call ups (see Paragraph [0046] and [0053]).

As to dependent claim 5, Harding teaches a control in accordance with claim 3, wherein at least one additional switch or push button (e.g., foot switch; keypad buttons) is provided on whose actuation a standard length of padding stored in the memory is called up, with the manufacture of at least one piece of padding being triggered automatically in the called up length on the call up of the length of padding (e.g., length of each pad) (see Paragraph [0046] and [0053]).

As to dependent claim 6, Harding teaches a control in accordance with claim 1, wherein a display device is provided (e.g., display; view in real-time) (see Paragraph [0077], [0071] and [0013]); and

wherein, when the control is switched on for the first time, a standard length of padding stored in the memory is displayed which can be called up by a further input means (e.g., display 54) (see Paragraph [0077]), with the manufacture of at least one piece of padding being triggered automatically in the called up length on the call up of the length of padding (e.g., length of pads) (see Paragraph [0071] and [0086]).

As to dependent claim 7, Harding teaches a control in accordance with claim 1, wherein it has a mode (e.g., mode selection switch 52) (see Paragraph [0045]) in which a combination of the desired number and of the desired length of the pieces of padding to be produced can be at least one of stored and called up (e.g., required number and lengths of pads as determined by a look-up table) (see Paragraph [0086]).

As to dependent claim 8, Harding teaches a control in accordance with claim 1, wherein an input means (e.g., keypad button) is provided with which a continuous

manufacture of pieces of padding in the stored length of padding can be activated (e.g., length of each pad) (see Paragraph [0046]).

As to dependent claim 9, Harding teaches a control in accordance with claim 3, wherein the individual switch or push button (e.g., foot switch), the input pad (e.g., keypad) and an input means (e.g., keypad button) for the activation of a continuous manufacture (see Paragraph [0046] and [0053]) are input means of equal priority for the call up of a length of padding, with the manufacture of at least one piece of padding being triggered automatically in the desired length on the call up of the length of padding (e.g., length of each pad) (see Paragraph [0046] and [0053]).

As to dependent claim 10, Harding teaches a control in accordance with claim 1, wherein a selection switch (e.g., mode selection switch 52) is provided with which a plurality of memory locations can be selected in the memory in which a produced length of padding can be stored automatically, with the associated stored length of padding being produced in dependence on the position of the selection switch (e.g., mode selection switch 52), in particular on the activation of the input means (see Paragraph [0045]).

As to dependent claim 11, Harding teaches a control in accordance with claim 10, wherein a further input means (e.g., foot switch; keypad buttons) is respectively associated with the plurality of memory locations to call up a length of padding stored at the respective memory location (see Paragraph [0046] and [0053]), with the manufacture of at least one piece of padding being automatically triggered in the called

up length on the call up of the length of padding (e.g., length of each pad) (see Paragraph [0046] and [0053]).

As to dependent claim 12, Harding teaches a control in accordance with claim 1, wherein a sensor is connected to it which detects the forthcoming end of the paper web (e.g., lack of paper; presence or absence of dunnage) (see Paragraph [0090] and [0047]); and

wherein the control generates a signal in response to the sensor which in particular interrupts a further operation of the machine at least temporarily (e.g., machine become inactive) (see Paragraph [0090] and [0047]).

As to dependent claim 13, Harding teaches a control in accordance with claim 1, wherein it has a connector for an electromagnetic coupling of an auxiliary unit (e.g., electronic dispensing system), with the control controlling the drive motor differently in dependence on whether the electromagnetic coupling is connected (e.g., mode selection switch 52), with the control preferably automatically recognizing whether an electromagnetic coupling is connected (e.g., electronic dispensing system) (see Paragraph [0045] and [0047]).

As to dependent claim 15, Harding teaches a machine in accordance with claim 14, wherein the control is made as a separate operating part which is connected to the machine via a cable, wherein a holder is in particular provided at the machine for the releasable installation of the control (e.g., cable connection) (see Paragraph [0107]).

As to dependent claim 16, Harding teaches a machine in accordance with claim 14, wherein a bus system is provided for the transmission of the control signals from the control to the machine (e.g., input bus 50) (see Paragraph [0053] and [0061]).

(10) Response to Argument

ISSUE: WHETHER CLAIMS 1-16 ARE ANTICIPATED UNDER 35 U.S.C. 102(e) HARDING ET AL.

Appellant's Argument 1:

Appellant's summary of invention found in Argument section of Appeal Brief:

The control includes an input means, such as a button 18, to input the desired length of the paper padding. Activation of the input means, e.g. by depressing and holding the button 18, initiates the drive motor and shaper to form the paper padding. Upon subsequent release or deactivation of the button 18, the control unit stops the drive motor and thus stops the production of paper padding and initiates a cutting procedure. Consequently, the length of time that the input means or push button 18 is suppressed is directly proportional to the length of paper padding produced. Thus, any variable length of paper padding may be produced by the machine and control unit of the present invention since the length of paper padding can be varied by simply varying the time of depression of the input means 18. Furthermore, this aspect of Applicant's invention is clearly defined in the penultimate paragraph of both claims 1 and 14, i.e. the two independent claims in this case.

Appellant's first argument:

More specifically, the Harding reference admittedly discloses a machine which produces paper padding. Applicant freely acknowledges that such paper padding machines are old.

The Harding controller also discloses a plurality of buttons wherein each button corresponds to a different length of padding. In Applicant's invention, however, variable lengths of padding can be produced simply by varying the duration of depression of the input means 18.

Examiner's Response 1:

The summary of invention as presented in Appellant's arguments (and reproduced above for convenience) is very different than what is claimed. The claims as written, do not mention "holding the button," "the length of time that the input means or push button is suppressed is directly proportional to the length of paper padding produced," or "varying the time/duration of depression." The claims and only the claims form the metes and bounds of the invention. Limitations appearing in Appellant's arguments but not recited in the claim are not read into the claim. The Examiner has full latitude to interpret each claim in the broadest reasonable sense. The arguments are not the measure of the invention, limitations contained therein cannot be read into the claims for the purpose of avoiding the prior art; see In re Sprock, 55 CCPA 743, 386 F.2d 924, 155 USPQ 687 (1968). The words "holding," "suppressed," or "time/duration of depression" are nowhere to be found in the claims, and more importantly not found in Appellant's specification.

See prior art Paragraph [0046] for "an operator may input the length of each pad which she desires the machine to produce by depressing the appropriate key on the keypad…length of time that equates to inches of dunnage material" to anticipate the claimed "length of padding." Under such considerations, the prior art anticipates the claims as written.

Appellant's Argument 2:

In paragraph [0049] the Harding reference does, however, indicate that the duration of activation of the machine could be varied by a foot switch. Furthermore, paragraph [0049] indicates that the cutting assembly may be actuated upon release of the foot switch. Consequently, it does appear that a variable length of padding can be constructed with the Harding device.

More specifically, these paragraphs clearly teach that the microprocessor may store information that it receives in nonvolatile memory. However, there is absolutely no suggestion or teaching in the Harding reference that the length of the paper padding last produced is stored in memory and there is clearly no teaching in this portion, or any portion for that matter, of the Harding patent specification that the length of paper padding last produced may be immediately recalled by a momentary activation of the foot switch (see paragraph [0040]).

Examiner's Response 2:

As noted in the previous office action, Examiner is not relying on the "foot switch" to anticipate Appellant's "input means." As discussed in the previous office action under Status of Claims, Claim Rejections, and Response to Arguments sections, the claimed

"input means" is anticipated by the prior art "keypad button," as supported by Appellant's Specification, Arguments, and Dependent claim 3. For a prior art example of anticipation, see paragraph [0046] where Harding discloses variable length of padding can be constructed with a “key on a keypad to be depressed to produce a length of dunnage corresponding to the key depressed.”

In response to the allegation that Harding does not teach:

1. "length of paper padding last produced is stored in memory," see prior art paragraph [0070] for ”all information received by the microprocessor 48 may be stored in a nonvolatile memory 230 for later retrieval,” paragraph [0077] for “keep a running total of paper used by the machine in the non-volatile memory 230 by indirectly measuring the time that the feed motor is running,” and paragraph [0081] for “store in the non-volatile memory 230 the total length of pad produced;” and

2. “length of paper padding last produced may be immediately recalled by a momentary activation of the [input means]," see prior art paragraph [0046] for “microprocessor 48 then waits for the next key on the keypad to be depressed and repeats the process to produce a length of dunnage corresponding to the key depressed,” prior art paragraph [0070] for ”all information received by the microprocessor 48 may be stored in a nonvolatile memory 230 for later retrieval,” and paragraph [0077] for “paper usage, as well as other information stored in the non-volatile memory 230 may be made available for display when desirable.”

Even though the prior art anticipates the claims, it is noteworthy to mention, the claims use the words “makes it available for...” thereby putting intended use language

into the claims (e.g., even the arguments avoid a positive limitation by using the words "may be").

Appellant's Argument 3:

More specifically, the thrust of this entire case is that variable length padding may be manufactured by activating the input means for a variable time period and that that variable length may be instantly recalled to duplicate the length. This is simply not possible in Harding. In Harding if you push the button, you get 12 inches of padding regardless of how long the button is pushed. If you want to repeatedly produce 13 inch padding you are simply out of luck.

Examiner's Response 3:

Appellant's conclusion is incorrect. "If you want to repeatedly produce 12 inches padding you" would simply repeatedly push the button. Examiner agrees the prior art teaches "you get 12 inches of padding regardless of how long the button is pushed." "How long the button is pushed" is immaterial because it is not a claimed limitation. And "the thrust of the entire case" as claimed, is anticipated by the prior art. See for example, prior art Paragraph [0046] for disclosure of "variable length may be manufactured (e.g., length of dunnage corresponding to the key depressed) by activating the input means for a variable time period (e.g., operator pushes button on the keypad...signal the feed motor and turn the feed motor on for a length of time that equates to inches of dunnage material) and that variable length may be instantly recalled to duplicate the length (e.g., waits for the next key on the keypad to be

depressed and repeats the process to produce the length of dunnage corresponding to the key depressed," as argued.

Appellant's Argument 4:

In short, claim 3 says in part that activation of the "switch or push button" starts the drive motor and deactivation triggers a cutting operation so that "the time period of the activation of the input means", i.e. the switch or push button of claim 3, "corresponds to the length of the padding produced". Harding simply does not teach or disclose this structure so that rejection of at least claim 3 is improper.

Examiner's Response 4:

Webster dictionary defines "activation" to mean to set into motion, make active, or more active. In other words, activation is NOT a synonym for depression. The claims are not limited to the duration of the push, but to the duration of the activation. A real life example of "the time period of the activation of the input means" having nothing to do with the duration of holding the button, is a doorbell (e.g., ding-dong sound activation). See prior art paragraph [0046] for disclosure of "operator pushes button on the keypad...signal the feed motor and turn the feed motor on for a length of time that equates to inches of dunnage material" to anticipate the claimed "time period of activation of the input means," and paragraph [0081] for further evidence of "activation/deactivation signals to the feed motor."

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Patent Examiner
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May 3, 2011

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